

DEFICIENCY PROGRESS REPORT – UPDATE 3

September 11, 2008

CUPA: AMADOR COUNTY ENVIRONMENTAL HEALTH DEPARTMENT

Evaluation Date: November 28 and 29, 2007

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Update 3 Submittal Date: September 4, 2008

Status: Deficiencies 2, 10, 11, and 12 remain outstanding.

Next Progress Report (4th Update) Due: December 1, 2008

1. **Deficiency:** The CUPA does not have Administrative Enforcement Order (AEO) form incorporated into their Inspection and Enforcement (I&E) Program Plan. This deficiency was identified during the CUPA's last evaluation in 2005.

Corrective Action: This deficiency is withdrawn. No further corrective action is required. An AEO form is not required to be incorporated into a CUPA's I&E Program Plan. Additionally, a draft revision of the CUPA's Hazardous Materials Ordinance and Inspection and Enforcement Program Plan, containing the AEO policy and procedure, were submitted to the Amador County Board of Supervisors for approval in September 2007. In January 2008, the CUPA will conduct workshops to educate the public about the revised Hazardous Materials Ordinance and I&E Program Plan.

CUPA Update 1: [No further update is required.]

2. **Deficiency:** The CUPA is not implementing and enforcing the requirements of the business plan program for all handlers subject to the program. Specifically, the CUPA is neither regulating nor properly exempting agricultural handlers subject to the business plan program.

Corrective Action by May 28, 2008: The CUPA must submit an action plan, with projected timeline, to either regulate all farms subject to the business plan program or to properly exempt these businesses under HSC, Chapter 6.95, Section 25503.5(c)(2), (3), (4) or (5).

CUPA Update 1: The Amador County Board of Supervisors applied for and was certified as a unified agency in 1997 under SB1082. The Administrative Enforcement Order procedure (HS&C section 25404.1.1) was incorporated into the Unified Program through to the enactment of AB2481 in 2002, after the application and certification of the Environmental Health Department. The Board of Supervisors held public hearing on an updated Hazardous Materials Ordinance and Inspection and Enforcement Plan, which contains the Administrative Enforcement Order policy on December 18, 2007. As a result of comments received at the public hearing, two public workshops were conducted on January 29, 2008 to inform the regulated public about the Unified Program and the Inspection and Enforcement Plan including the Administrative Enforcement Order procedure.

Due to large amounts of public interest, the Board of Supervisor directed that additional informational meetings be provided to the regulated community, including the agricultural or to continuing the public hearing on the updated Hazardous Materials Ordinance and Inspection and Enforcement Plan. Considerable interest was shown by the agricultural community at the workshops, which resulted in the Agricultural Commissioner agreeing to development and administer the hazardous materials business plan portion of the unified program under HS&C 25503.5.(c)(5). An informational meeting, hosted by the Agricultural Commissioner, is scheduled for March 15, 2008. A public hearing on the Hazardous Materials Ordinance and Inspection and Enforcement Plan is scheduled for April 8, 2008.

Comments to Update 1: *This deficiency remains in the process of being corrected. On the next update, due on June 2, 2008, please report the CUPA's progress on implementing the farm exemption, utilizing the services of the Agricultural Commissioner's office.*

CUPA Update 2: The Amador County Board of Supervisors at their regular meeting on April 15, 2008, adopted an ordinance repealing the existing hazardous materials and hazardous waste ordinance and adopting an updated ordinance incorporating the provisions of the Unified Program for Amador County. Resolution 08-078 was passed by the Amador County Board of Supervisors on May 6, 2008, authorizing the Agricultural Commissioner to distribute, accept, and forward hazardous materials business plans of agricultural handlers and designating the Agricultural Commissioner to conduct compliance inspections of agricultural handlers.

It is anticipated that the office of the Agricultural Commissioner will be distributing, accepting, and forwarding hazardous materials business plans of agricultural handlers and conducting compliance inspections by November 2008.

Comments to Update 2: *This deficiency appears to be on its way to being resolved. With the aid of the Amador County Agricultural Commissioner, agricultural handlers should be integrated into the hazardous materials business plan program. On the next progress report, due on September 2, 2008, please include an update on how the Agricultural Commissioner is integrating agricultural handlers into the hazardous materials business plan program.*

CUPA Update 3: There have been several meetings with the County Agricultural Commissioner and staff and it appears that HMBP inspection process is similar to inspections related to pesticide regulation. Discussions are continuing.

Comments to Update 3: *This deficiency remains in the process of being corrected, and appears to be on it's way to being resolved with the aid of the Amador County Agricultural Commissioner. On the next progress report, due on December 1, 2008, please include any new progress towards resolving this deficiency.*

3. **Deficiency:** The CUPA's Area Plan does not have all the required elements. This deficiency was identified during the CUPA's last evaluation in 2005 and remains outstanding.

Corrective Action by November 29, 2008: The CUPA has applied for and received a Hazardous Materials Emergency Planning (HMEP) grant to prepare an Area Plan. By November 29, 2008, the CUPA shall have an approved Area Plan implemented.

CUPA Update 1: A notice of intent to apply for a 2007/2008 Hazardous Material Emergency Preparedness grant (Grant) was submitted to Region IV LEPC on June 18, 2007. The Board of Supervisors approved the submission of the Grant application on the July 10, 2007 consent calendar. A completed Grant application was hand delivered to the OES Region IV LEPC staff at the Region IV LEPC meeting on July 17, 2007. The grant application proposes to hire an experienced consultant to prepare the area plan in coordination with Environmental Health.

Notification was received from the Governor's Office of Emergency Services on October 3, 2007 that the project and grant had been approved. Signed acceptance forms for Grant No. HEMCA 7033150 were returned to Emergency Service on October 12, 2007. The signing of a contract with Boykin Consulting Services was approved on the Amador county Board of Supervisors Consent Agenda on February 26, 2008.

Comments to Update 1: *This deficiency has been corrected and no further update is required. Once the plan has been received from the contractor and accepted, please send a copy to OES for review.*

4. **Deficiency:** The CUPA is not inspecting all businesses subject to the business plan for compliance every three years. This deficiency was identified during the CUPA's last evaluation in 2005 and remains outstanding.

Corrective Action by March 3, 2008: By March 3, 2008, the CUPA must submit an action plan outlining how the CUPA will maintain their inspection frequency. By December 1, 2008, the CUPA will have at least a third of their business plan facilities inspected.

CUPA Update 1: 3 hazardous materials business plan inspections and 4 UST/hazardous materials business plan inspections were conducted in this reporting period. A drop in the demand for onsite sewage disposal permitting is allowing redirection of Environmental Staff to the CUPA program to insure that one third of non UST HMBP (~57 yr) are inspected annually. Additional funding which will become available with the enactment of A.B. No. 1257 (Caballero) will ensure an adequate staffing level for the CUPA programs.

Comments to Update 1: *This deficiency remains outstanding. On the next update, due on June 2, 2008, please submit a plan on how the CUPA will maintain a triennial inspection frequency of its business plan facilities. In addition, submit a progress of the CUPA's implementation of the plan, including the number of regulated businesses and the number of businesses inspected for compliance from July 1, 2007, to April 31, 2008.*

CUPA Update 2: The HMBP data base has been reviewed and 49 small facilities have been identified and scheduled for inspection by staff over the next six months. Large facilities have been categorized by risk and scheduled for inspection (between 5 to 14 facilities per month)

over the next six months. All currently identified facilities should have a current 3 year inspection by December 2008. All CUPA facilities will be placed in a 3 year rotation at that time. There are currently 206 identified facilities and 70 CUPA facility inspections were conducted between July 2007 and April 2008.

Comments to Update 2: *The CUPA has satisfactorily addressed and corrected this deficiency. Keep up the good work.*

5. **Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements to annually submit their hazardous materials inventory or certification statement. This deficiency was identified during the CUPA's last evaluation in 2005.

Corrective Action: This deficiency has been corrected. Out of the nine files reviewed, eight files contained current annual inventories with either certifications or updated inventory sheets.

CUPA Update 1: [No further update is required.]

6. **Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to certify and review the update of the entire business plan every three years. This deficiency was identified during the CUPA's last evaluation in 2005.

Corrective Action: This deficiency has been corrected. Out of the nine files reviewed, eight files had their Business Plan reviewed and updated within the last three years.

CUPA Update 1: [No further update is required.]

7. **Deficiency:** The CUPA does not have a California Accidental Release Prevention (CalARP) dispute resolution procedure. A draft resolution procedure was presented at the time of the evaluation. This deficiency was identified during the CUPA's last evaluation in 2005 and remains outstanding.

Corrective Action by March 3, 2008: The CUPA must have their CalARP dispute resolution procedure finalized and implemented.

CUPA Update 1: A California Accidental Release Prevention (CalARP) dispute resolution procedure (attached) has been established which utilizes the Administrative Enforcement Order (AEO) procedure established in the CUPA Inspection and Enforcement Plan.

Comments to Update 1: *The supplied procedure satisfies all the elements of California Code of Regulations title 19, section 2780.1. The deficiency has been corrected and no further update is required.*

8. **Deficiency:** The UST plot plans did not contain all the required elements. The plot plans were missing the location(s) of where the monitoring will be performed. Examples of missing

locations include the sensors for tanks, sumps, under-dispenser containments, line leak detectors, and monitoring panels for automatic tank gauge and alarms.

Corrective Action: Beginning November 29, 2007, UST plot plan requirements will be modified to include location of all leak detection monitoring equipment. The CUPA will request for updated plot plans to be submitted by the facility's annual inspection date. In addition, the CUPA will ensure that new permit application materials contain completed plot plans. By December 1, 2008, the CUPA will ensure that all UST plot plans contain all the required elements.

CUPA Update 1: The updated SWRCB UST Monitoring Site Plan requiring the location of all leak detection monitoring equipment has been included in the new UST Permit application package.

Comments to Update 1: *This deficiency is considered a correction in progress. On the next update, due on June 2, 2008, please submit a copy of the CUPA's new UST Permit application package showing that the UST monitoring site plan requires the location of all leak detection monitoring equipment.*

CUPA Update 2: A copy of the current UST application package is being submitted with hard copy of this response. The application package includes site map template provided by the SWRCB as part of the UST Monitoring Plan (UPCF UST-D 12/2007).

Comments to Update 2: *The SWRCB confirms that the permit application materials contain the required plot plan template. The SWRCB assumes that plot plans are being updated by the facilities and that this deficiency is corrected. No further update is required.*

- 9. Deficiency:** The CUPA is not conducting hazardous waste generator inspections with a frequency consistent with their I&E Program Plan, which is triennial.

Corrective Action by December 31, 2007: The CUPA will develop a strategy and begin implementation of a plan to ensure adherence to the triennial inspection frequency requirement as noted on their I&E Program Plan.

Beginning March 3, 2008, the CUPA will submit a status of their progress, including the number of facilities inspected.

CUPA Update 1: 3 CESQG inspection were conducted as part of the hazardous materials business plan inspections in this reporting period. The revised I&E program is under review by the Board of Supervisors and scheduled for a public hearing on April 8, 2008.

Comments to Update 1: *This deficiency remains outstanding as an implementation plan to ensure a triennial inspection frequency occurs has not been identified. On the next update, due on June 2, 2008, please submit information on the implementation plan, including the*

number of hazardous waste generator facilities and the number of generators inspected for compliance from July 1, 2007, to April 31, 2008.

CUPA Update 2: Small quantity generator (SQG) and conditionally exempt small quantity generator (CESQG) inspections that are conducted as part of a HMBP are not tracked separately. The generator program is not yet fully implemented, due to lack of resources and the need to concentrate the available resources in other CUPA programs as discussed in this response.

Comments to Update 2: *DTSC acknowledges that the CUPA has a lack of resources with regard to their generator program and is not separating the SQG, CESQG, and HMBP inspections. As soon as the CUPA is able, DTSC requests the number of hazardous waste generator facilities and the number of generators inspected to date. Until that time, DTSC will consider this deficiency as remaining outstanding.*

CUPA Update 3: Small (SQG) and conditionally exempt small quantity generators (CESQG) inspected as part of the hazardous materials business plan inspections were compiled and included in the 2007/2008 annual report. An estimated 64 regulated facilities have been identified and 35 inspections conducted as part of the HMBP inspections. This is an incomplete universe as generators handling quantities below HMBP thresholds have not yet been identified.

Comments to Update 3: *This deficiency has been corrected. DTSC appreciates the CUPA's efforts in continuing to identify its generator universe and expects the CUPA to have such a complete list by the next CUPA evaluation.*

10. Deficiency: The CUPA did not conduct a complete [hazardous waste generator] inspection on November 27, 2007.

Corrective Action by November 29, 2008: The CUPA shall have moved from outreach to full health and safety compliance inspections.

CUPA Update 1: The Amador County Board of Supervisors applied for and was certified as a unified agency in 1997 under SB 1082. The Administrative Enforcement Order procedure (HS&C section 25404.1.1) was incorporated into the Unified Program through the enactment of AB 2481 in 2002, after the application and certification of the Environmental Health Department. The Board of Supervisors held a public hearing on an updated Hazardous Materials Ordinance and Inspection and Enforcement Plan, which contains the Administrative Enforcement Order policy on December 18, 2007. As a result of comments received at the public hearing, two public workshops were conducted on January 29, 2008 to inform the regulated public about the Unified Program and the Inspection and Enforcement Plan including the Administrative Enforcement Order procedure.

Due to large amounts of public interest, the Board of Supervisor directed that additional informational meetings be provided to the regulated community prior to continuing the public

hearing on the updated Hazardous Materials Ordinance and Inspection and Enforcement Plan. An informational meeting for regulated community is tentatively scheduled for March 21, 2008. A public hearing on the Hazardous Materials Ordinance and Inspection and Enforcement Plan is scheduled for April 8, 2008.

Comments to Update 1: *This deficiency remains outstanding. The CUPA certification process required that an Inspection and Enforcement Program Plan be developed and in effect no later than one year after certification. As such, DTSC expects the CUPA to follow this I&E Program Plan for conducting inspections of hazardous waste generators and not just for doing outreach. It is not clear to DTSC what the above mentioned public hearing has to do with conducting generator inspections and with correcting this deficiency. On the next update, due on June 2, 2008, please provide information on the corrective action requested.*

CUPA Update 2: The November 2007 Cal/EPA Evaluation identified deficiencies in the existing I&E Program Plan. Since the evaluation, the CUPA has revised the I&E Program Plan and attempted to have the plan approved by the Board of Supervisors. The draft plan was presented to an ad hoc of the Board of Supervisors, which after 12 months of discussion, referred the revised I&E Program Plan to a Hazardous Materials Advisory Committee as part of the new Hazardous Materials Ordinance. The Committee is in the process of being created. A public notice requesting volunteers for the committee was published on May 27, 2008.

The first task of the committee will be the review of the draft I&E Program Plan with the intent of submitting a final I&E Program Plan to the Board of Supervisors for approval by August 2008. Generator inspections will be conducted according to the approved I&E Program Plan. Generator inspections in the interim will continue to be conducted in conjunction with the HMBP to maximize the effectiveness of the existing limited resources.

Comments to Update 2: *DTSC awaits a positive response with the approval of the CUPA's final I&E Program Plan in August 2008 as the CUPA's current interim inspections are unsatisfactory. In the meantime, DTSC will be reviewing the I&E Program Plan and will make suggested corrections as necessary. Once the I&E Program Plan is approved, DTSC will provide training to the CUPA to help the CUPA implement the final I&E Program Plan. This should bring the CUPA into compliance from this still outstanding deficiency as quickly as possible.*

CUPA Update 3: The Board of Supervisors approved the revised ordinance Hazardous Materials Ordinance on April 8, 2008, with the provision that an Advisory Committee be established to provide stakeholder involvement in establishing policy for the implementation of the ordinance. The committee members were approved by the Board on July 29, 2008, and the Committee held its first meeting on August 28, 2008.

Comments to Update 3: *This deficiency is corrected contingent upon the CUPA's satisfactory completion of DTSC-provided training, which will occur by December 11, 2008, at the latest.*

11. Deficiency: The CUPA is not documenting violations in a manner consistent with the definitions of minor, Class II or Class I as provided in law and regulation.

Corrective Action by November 29, 2007: Beginning November 29, 2007, the CUPA will document all violations on their inspection reports even if the violations are corrected on site.

CUPA Update 1: All violations, even if the violations are corrected on site, are being documented on inspection reports.

Comments to Update 1: *DTSC appreciates the CUPA's efforts to document violations. On the next update, due on June 2, 2008, please submit an inspection report or summary of violations that demonstrates violations corrected on site have been documented.*

CUPA Update 2: [Refer to deficiency item 12.]

Comments to Update 2: *DTSC awaits a positive response with the approval of the CUPA's final I&E Program Plan in August 2008 as the CUPA's current interim inspections are unsatisfactory. In the meantime, DTSC will be reviewing the I&E Program Plan and will make suggested corrections as necessary. Once the I&E Program Plan is approved, DTSC will provide training to the CUPA to help the CUPA implement the final I&E Program Plan. This should bring the CUPA into compliance from this still outstanding deficiency as quickly as possible.*

CUPA Update 3: See response to deficiency number 10.

Comments to Update 3: *This deficiency is corrected contingent upon the CUPA's satisfactory completion of DTSC-provided training, which will occur by December 11, 2008, at the latest.*

12. Deficiency: The CUPA is unable to document that all facilities that have received a notice to comply, citing minor violations, have returned to compliance within 30 days of notification. During the file review, it was observed that minor violations did not have a record of return to compliance. The business shall either submit a Return to Compliance Certification in order to document its compliance or, in the absence of certification, the CUPA shall follow up with the business to confirm that compliance has been achieved.

Corrective Action by December 31, 2007: The CUPA shall ensure that facilities, who are cited for minor violations during hazardous waste inspections, have either submitted a Return to Compliance letter or the CUPA will follow up within an appropriate time frame.

CUPA Update 1: CESQG inspections, conducted as part of the HMBP inspections, observed minor violations which were corrected at the time of inspection and noted on the inspection report.

Comments to Update 1: *This deficiency remains outstanding. DTSC appreciates the CUPA's effort at documenting return to compliance for minor violations cited during hazardous waste inspections. As noted in the preliminary corrective action, the CUPA was asked to ensure submittals of Return to Compliance letters or to follow up with the business to ensure compliance. On the next update, due on June 2, 2008, please explain how the CUPA has accomplished this corrective action.*

CUPA Update 2: The absence of an approved I&E Program Plan makes the definition of the violation and appropriate action difficult. Violations are noted on the inspection forms and return to compliance verified through the submittal of appropriate documentation or re-inspection. Copies of March 2008 inspection report, follow up enforcement letter, and return to compliance documentation are being submitted with hard copy of this letter.

General Note – The CUPA has focused the limited resources available on improving the highest priority items identified by Cal/EPA during the CUPA evaluation. A revised Hazardous Materials Ordinance has been approved by the Board of Supervisors. A Hazardous Materials Advisory Committee has been established to provide guidance to the Board of Supervisors on the implementation of the CUPA programs. An agricultural element to the HMBP program has been established. All required UST annual inspections were conducted by ICC certified inspectors. HMBP inspections are scheduled to meet the three year inspection frequency by the end of 2008. A grant has been obtained and consultant retained to update the Hazardous Materials Area Plan. Implementation of the Aboveground Petroleum Storage Program is underway including application for implementation funds from Cal/EPA.

The CUPA recognizes that for each state agency, the particular hazardous materials program being implemented by the agency is of the highest priority. The perspective of a small local agency (rural county with less than the 40,000 population) is slightly different. While all mandated hazardous materials programs are important, it is necessary to prioritize the available resources to address the critical needs and highest potential risk first.

Comments to Update 2: *DTSC awaits a positive response with the approval of the CUPA's final I&E Program Plan in August 2008 as the CUPA's current interim inspections are unsatisfactory. In the meantime, DTSC will be reviewing the I&E Program Plan and will make suggested corrections as necessary. Once the I&E Program Plan is approved DTSC will provide training to the CUPA to help the CUPA implement the final I&E Program Plan. This should bring the CUPA into compliance from this still outstanding deficiency as quickly as possible.*

CUPA Update 3: See response to deficiency number 10.

Comments to Update 3: *This deficiency is corrected contingent upon the CUPA's satisfactory completion of DTSC-provided training, which will occur by December 11, 2008, at the latest.*